IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.6914/97

Balram Singh Nathawat & Ors.

Versus

State & Ors.

DATE OF ORDER :: 09/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Pankaj Sharma, for petitioners
Mr. Ghanshyam Singh for Mr. R.S. Rathore, AAG, for respondents

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Instant petition has jointly been filed by employees who are working as Commercial Taxes Inspector Gr.II with the grievance that on completion of 9 years of service, they became entitled for grant of first promotional scale in terms of circular dated 25th January, 1992.

Facts almost are not in dispute. Petitioners initially entered into service on the post of Commercial Taxes Inspector Gr.II which is the lowest post included in the Scheduled appended to Rajasthan Commercial Taxes Subordinate Service [General Branch] Rules, 1975. The next promotional post is Commercial Taxes Inspector Gr.I, but dispute was also raised by employees of department that post of Commercial Taxes Inspector Gr.I for all practical purposes has never been considered by the department as promotional post. Promotions were made from Gr.II straightway to the next higher post in the State

service i.e. Assistant Commercial Taxes Officer which is included in the schedule appended to Rajasthan Commercial Taxes Service Rules, 1971.

The dispute came before this court in C.W. No.1450/99 & 6 other similar cases, decided on 20th August, 2001 wherein this court observed that when promotions are made under the Rules, 1971 for the post of Assistant Commercial Taxes Officer and no distinction has been made of Gr.I or Gr.II. Thus, for all practical purposes, the post of Gr.I has been considered by the department by passage of time as a dead letter. The judgment is reported in 2001(3) RLR 134 and relevant Paras 7 & 8 thereof are reproduced as under:

> "Apart from this, the fact is that right from the year 1971 no post of Commercial Taxes Inspector Gr.I is filled in, in the respondent Department and promotions have been made on the post of Assistant Commercial Taxes Officer directly from the post of Commercial Taxes Inspector Gr.II. Virtually for all practical purposes the respondent Department has considered the post of Commercial Taxes Inspector Gr.I as a dead letter.
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> Although the State Government has not removed the post of Commercial Taxes Inspector Gr.I from the Rules of 1975 but by practice and effect the post is not being made operative from the very inception of the Rules of 1975 and was not given effect. It would be assumed that post of Commercial Taxes Inspector Gr.I is abandoned by the State and is being repealed by implication".

It is true that under the scheme of rules, the post of Commercial Taxes Inspector Gr.I still exists, but by the judgment of this court [supra], it has been observed that Gr.I is dead letter and has never been carried out by the respondents while considering the cases for promotion – as a consequence whereof, the Commercial Taxes Inspector with 5 years service became entitled for promotion for the post of ACTO. Thus, in view of judgment of this court [supra], the first promotional post considered for Commercial Taxes Inspector is ACTO which is included in the schedule appended to the Rules, 1971.

The State Government introduced the grant of selection scale for employees who are working in the cadre of Class IV, Ministerial & Subordinate Service vide its circular dated 25th January, 1992 with an object that since employees are facing stagnation and despite being eligible for promotional post could not be considered for promotion in lieu thereof, the scheme of selection scale to such employees on completion of 9 years service. The extract of circular dated 25th January, 1992, which make an incumbent eligible for grant of first promotional scale on completion of 9 years of service, is reproduced as under:

> 2(i) The first Selection Grade shall be granted from the day following the day on which one completes service of nine

> years, provided that the employee has not got one promotion earlier as is available in his existing cadre.
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> (ii) The second Selection Grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre and the first Selection Grade granted to him was lower than the pay scale of Rs.2200-4000.
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> (iii) The third Selection Grade shall be granted from the day following the day on which one completes service of twenty seven years, provided that the employee has not got three promotions earlier as might be available in his existing cadre and the first or the second Selection Grade granted to him, as the case may be, was lower than the pay scale of Rs.2200-4000.

Counsel for petitioners submits that in view of judgment [supra], they became entitled for selection scale on completion of 9 years of service of their first promotional post i.e. ACTO, but the respondents by an error fixed them on completion of 9 years in the selection scale of Gr.I which is erroneous and such action of the respondents is violative of Article 14 of the Constitution.

Respondents have filed reply to the writ petition and this fact has not been disputed and controverted by them that the promotional post of such employees who are working in the cadre of Inspector Gr.II is of ACTO which is under Rules,

1971 and post of Inspector Gr.I has never been filled at any point of time since 1971 onwards and this has also been referred to by this court in the judgment [supra].

Counsel for respondents tried to convince this court that grant of promotion and selection scale are two distinctive features and cannot be mixed together. According to them, the next higher scale is below the promotional scale is the post of Commercial Taxes Inspector Gr.I which is still available under the Rules, 1975 and thus incumbent who is holding the post of Gr.II will be entitled for selection scale on completion of 9 years of service of Inspector Gr.I and not of ACTO under Rules, 1971.

I have considered the submission of both the counsel and perused the material available on record.

So far as scheme of promotion is concerned, as per practice of the Government and so also after the judgment [supra] of this court, this fact remain uncontroverted on the contrary accepted by the Government. The post of Inspector Gr.I is ineffective and is a dead letter for all practical purposes despite the fact that it is included in the schedule of the Rules, 1975 promotions are made straightway of Commercial Taxes Officer Gr.II to the post of Assistant Commercial Taxes Officer which is under the

Rules, 1971. The scheme of selection scale which has been introduced by the Government is in lieu of promotion and employees who are facing stagnation despite their eligibility are not being considered for promotion for one or other reason and the first selection scale became due to an incumbent on completion of 9 years of service provided that the employee has not got one promotion earlier as is available in his existing cadre.

Once the promotional post became the post of ACTO and not of Inspector Gr.I, in my considered opinion, employees who are holding the post of Inspector Gr.II became entitled for grant of selection scale of their first promotional scale i.e. ACTO which is included in the schedule of Rules, 1971 and not of Commercial Taxes Officer Gr.I which is the next higher post under the Rules, 1975.

Submission made by the counsel for respondents making distinction in regard to promotion and so also selection scale, in my considered opinion, is of no substance for the reason that scheme of selection scale has been introduced in lieu of promotion and not in isolation and once this fact remain uncontroverted that his promotional post available to employees who are working as Inspector Gr.II is of ACTO, in my considered opinion, being the first promotional post an

incumbent became entitled for first selection scale on completion of 9 years of service i.e. promotional post in terms of circular dated 25th January, 1992 and no distinction can be made merely because it is not acceptable to respondent State.

Consequently, the writ petition stands allowed. Respondents are directed to consider the case of petitioners and all such employees who are working as Commercial Taxes Inspector for their first selection scale on completion of 9 years of service of the post of ACTO in terms of circular dated 25th January, 1992 after undertaking such exercise as observed above. Arrears be computed and paid to them within three months. No order as to costs.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.